JUN 28 1941
CLERK

Supreme Court of the United States

OCTOBER TERM 1941.

No. 220

FREDA R. CASPERSEN, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

AND

BRIEF IN SUPPORT THEREOF

JACKSON R. COLLINS,
Counsel for Petitioner.

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Supreme Court of the United States

October Term 1941.

Docket No. --------

FREDA R. CASPERSEN, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MAY IT PLEASE THE COURT:

The petitioner, Freda R. Caspersen, by her attorney, Jackson R. Collins, respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved

The case involves alleged deficiencies in federal income taxes of the petitioner for the calendar years 1934 and 1935 in the amounts of $1,369.51 and $1,406.03 respectively.

The deficiencies result from a determination by the Commissioner of Internal Revenue that *all of* the income of a

trust created by the petitioner was taxable to her as the grantor under Section 167 of the Revenue Act of 1934, c. 277, 46 Stat. 680, 26 U. S. C. A. Int. Rev. Acts, P. 727, because the balance of the trust income in excess of the payments made to the grantor was distributable to her "in the discretion of * * * (a) person not having a substantial adverse interest in the disposition of such part of the income." The United States Board of Tax Appeals held that the husband-trustee had a substantial adverse interest and ruled for the petitioner. The United States Circuit Court of Appeals for the Third Circuit reversed the decision of the United States Board of Tax Appeals, holding that the husband-trustee had no substantial adverse interest. The majority opinion was written by Judge Jones; Judge Maris dissented.

The questions involved are as follows:

1. Does a husband-trustee to whom property is irrevocably conveyed, with sole and absolute discretion to distribute or accumulate the income therefrom in such divisions and proportions as he might designate to his needy relatives and other relatives named in the trust instrument as he might appoint, consisting of the grantor, their minor son, his aged parents, her aged parents, aunts and other relatives of the husband-trustee and grantor, have a substantial adverse interest in the disposition of such income to that of the grantor?

2. Is Section 167 (a) (2) of the Revenue Act of 1934 constitutional if construed to permit the taxation to the grantor of income of a trust which was neither distributed to nor accumulated for her, nor applied nor applicable to the discharge of any of her obligations, and the distribution of which was not subject to her control?

The material facts are as follows:

Taxpayer, a resident of New Jersey, on June 3, 1932, transferred to her husband, Olaus W. Caspersen, as trustee,

certain shares of stock having a value of about $55,000 in trust, the trust agreement providing in part that:

> (3) From the net quarterly income arising from the trust fund hereby created, to pay FIRSTLY, to the said Freda R. Caspersen for and during such time as the said Olaus W. Caspersen, her said husband, shall live, the sum of Six hundred ($600.00) dollars every three months, provided, however, that she shall during such time remain the wife of the said Olaus W. Caspersen, and SECONDLY, to pay out of the remaining balance, after the aforesaid payment, to any blood relative or relatives of the said Freda R. Caspersen and Olaus W. Caspersen at such time, in such amounts, and to such person as in the sole judgment of said Trustee, Olaus W. Caspersen, he shall choose and deem best or proper, to aid them in meeting their necessary living expenses, and THIRDLY, and unexpended income remaining after the aforesaid payments in the discretion of and during trusteeship of Olaus W. Caspersen may be paid in whole or in part to the said Freda R. Caspersen or if not paid at the close of the calendar year, shall FOURTHLY, be added to the corpus of the trust and shall be reflected in a special account on the books of the trust. Such amount as may be accumulated as evidenced by this account may be distributed in the discretion of Olaus W. Caspersen, during his trusteeship only, for the payment of educational, food, shelter, clothes, medical or other necessary expenses of any child or children of Olaus W. Caspersen and Freda R. Caspersen or any issue of such child (R. 1, 2).

Numerous contingencies and final distribution of the trust fund were provided for in the trust instrument. The trust was not to end until both the taxpayer and her husband had died and their son had attained the age of 40 years, or sooner died, but the husband-trustee had power to terminate the trust during his life, in which case the trust fund was to be distributed to the children of taxpayer and her husband or to the issue of such children. The trust has not been terminated. Some of the shares of stock trans-

ferred in trust taxpayer had purchased and the rest she had received as a gift from her husband (R. 2).

The income of the trust was (R. 3):

Year	*Income*	*Non-taxable long term capital gains*	*To grantor*	*To needy blood relatives (1)*	*Accumulations*
1934	$ 9,522.30	—	$5,200	$ 895.27	$3,427.07
1935	10,482.12	$395.32	3,400	2,720.19	4,756.95

Those relatives in 1934 included taxpayer's mother, her trustee-husband's niece and two needy aunts, two aunts of the trustee-husband's father and an aunt of his mother; and in 1935, also the mother of the husband of the taxpayer and his cousin. All of them were old and not wealthy. None of the accumulated income has been paid to or on behalf of the son. The trust has not loaned or borrowed money (R. 2, 3).

The taxpayer included within her taxable income only the amounts actually distributed to her (R. 3).

The United States Board of Tax Appeals ruled that the husband had a substantial adverse interest in the disposition of trust income because it enabled him without hindrance or accountability to use the income for the discharge of his own obligations to support his minor child as he is required by New Jersey law; the need to support his mother and other relatives was not mentioned in its opinion though set forth in the record and the brief on behalf of the taxpayer. The United States Board of Tax Appeals held that

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(1)

Name	*1934*	*1935*
Rose Budson, mother of taxpayer	$350.00	$ 350.00
Rose Westby, aunt of trustee	400.00	—
Annette Andreassen, aunt of trustee	20.00	130.00
Christiana Sivertsen, Aunt of trustee's father	50.00	100.00
Mary Sivertsen, aunt of trustee's father	50.00	100.00
Alma Caspersen, aunt of trustee	12.93	—
Thea Tollittson, aunt of mother of trustee	12.30	15.09
Esther Simonson, cousin of trustee	—	25.00
Augusta Caspersen, mother of trustee	—	2,000.00
Totals	$895.23	$2,720.09

this was not remotely possible a legal or contingent obligation, but that it was a presently existing obligation inherent in the fact that the child was a minor and without sufficient means of support and maintenance. The Board held that the power to use any income for the support of his child gave the husband such a substantial adverse interest in it as to support a disregard of the financial position of the wife and refusal of any demand or request which she might make for the income in regard to its use. *In New Jersey a mother has no obligation to support her child if the father is able to do so.* Here the father was quite able and did support the child. The Board held that this was an interest adverse to that of the grantor irrespective of a common interest in the welfare of the child and their apparently harmonious relations (R. 3, 4).

The United States Circuit Court of Appeals for the Third Circuit reversed the decision of the United States Board of Tax Appeals. The Court held that the adverse interest of the husband-trustee based on his duty to support his child was offset by his duty to support his wife. They further held that the grantor was under a similar duty to support the child without quoting authority (either case or statutory) which alleged rule was erroneous and contrary to the long established New Jersey rule that the wife or mother has not such duty as long as the husband-father is able to do so. The Court decided that these factors offset the duty of the husband-trustee and that he had no substantial adverse interest under Section 167 (a) (2) of the Revenue Act of 1934 (R. 7-13). In the language of this Court they sought to determine what they thought the law of New Jersey ought to be rather than what it was. *Klaxon* v. *Stentor,* decided June 2, 1941, No. 741, reported in *The United States Law Week* for June 3, 1941, Vol. 9, Sec. 4, page 4380.

B.

Reasons Relied on for the Allowance of the Writ

I.

In recent years there has been a great development of legislation to minimize and alleviate absolute poverty and want in this country. Social Security Laws, Unemployment Compensation Laws, Workmen's Compensation Laws and Old Age Assistance Laws are a few of the recent statutes. Under the laws of New Jersey a man is liable to support his minor child; he is also required to support blood relatives as set forth in Title 44, Article 17 of *New Jersey Statutes, Annotated.*[1] If he should fail to do so, he may be forced to by the courts.

Moreover, every civic and every Christian rule imposed this adverse economic duty upon the husband-trustee. The finding and declaring such duty as not substantially adverse violates the cherished ideals and duties of the American family. To find and declare that there is no substantial adverse legal interest is to degrade and undermine respect for the Courts, because the good people of the land know such a rule of law undermines and destroys the foundations and institutions of America. The issue is of fundamental importance, regardless of correcting the injustice to this particular taxpayer.

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[1] "*Relatives chargeable*

The father, grandfather, mother, grandmother, children, grandchildren, and husband or wife, severally and respectively, of a poor, old, blind, lame or impotent person or other poor person or child not able to work, shall, if of sufficient ability, at his or their charge and expense, relieve and maintain the poor person or child in such manner as the overseer of the poor shall order, or the court upon its own initiative or the information of any person, after notice to the person or persons chargeable and hearing the overseer, may so order."

There is a moral obligation and a natural impulse for a man to apply any fund that is a surplus above all duties in accordance with his station in life to the support of his children and other old and "needy" relatives, (most of whom were more than 70 years of age and the amounts distributed were the difference between existence and living).

In fact and in law the husband-trustee in this case had an adverse substantial interest in the trust fund. This Honorable Court has never settled the question as to what is a substantial adverse interest of a trustee, husband or son, or nephew. The statutes of New Jersey and applicable principles in Social Security Laws indicate that the United States Circuit Court of Appeals for the Third Circuit erred in holding that the husband-trustee had no substantial adverse interest; and to hold that he had no such interest departs so far from the accepted and usual course of judicial procedures as to call for the exercise of the power of supervision by this Honorable Court.

Sound family relationship and its duties are paramount to immediate collection of revenue, and in the long run develop true administrative efficiency. They are here presented in direct form.

II.

The taxpayer did not receive the income for which the Commissioner has assessed deficiencies; said income discharged no obligation of the taxpayer or its equivalence, and it will never be available to her. To tax her on this income is to require her to pay tax upon the income of another. Such taxation results in the taking of property without due process of law and is in violation of the Fifth Amendment.

Wherefore, petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this

Honorable Court directed to the United States Circuit Court of Appeals for the Third Circuit, demanding that Court to certify and send to this Court, for its review and determination on a day certain therein to be named, a full and complete transcript of the record and all proceedings in this case numbered and entitled on its docket "No. 7450, *Commissioner of Internal Revenue* v. *Freda R. Caspersen,*" and that said judgment of the United States Circuit Court of Appeals for the Third Circuit may be reviewed by this Honorable Court, and that this petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

JACKSON R. COLLINS,
Counsel for Petitioner.